

**BOARD OF COUNTY COMMISSIONERS  
AGENDA ITEM SUMMARY**

Meeting Date: June 16, 2004

Division: Growth Management

Bulk Item: Yes ☐ No ☒ X

Department N/A

**AGENDA ITEM WORDING:**

Public hearing to adopt an ordinance amending Section 9.5-119 (Environmental Restoration Standards and Agreements) and Section 9.5-346 (Transplantation Plan), Monroe County Code (MCC) to provide more effective standards for restoration of habitat, eliminate transplantation as a mitigation option and replace it with payment of mitigation fees into the County's "Restoration Fund" to be renamed, and an increase in said fees to act as a stronger deterrent to illegal clearing and development. [One hearing only required.]

**ITEM BACKGROUND:**

Concerns have been raised regarding the illegal clearing of environmentally sensitive lands and development occurring without the benefit(s) of permits. As a result of these concerns, an ordinance to amend Section 6-29, Monroe County Code (MCC) was drafted and approved to increase fees for after-the-fact (ATF) permits, including the provision of mitigation fees for unlawful filling of wetlands. As a result of the amendment to Section 6-29, Growth Management Division staff was directed to prepare amendments to Section 9.5-119, MCC, to strengthen the standards for restoration of habitat areas that are illegally cleared. Staff was also directed to amend Section 9.5-346, MCC, to change the requirements for transplantation to eliminate transplantation as a mitigation option. This change will provide a dedicated revenue source for supporting the County's management of its conservation lands.

[ Note: There are two ordinances included in BOCC packet. One contains the Planning Commission's recommendation to withhold permits on any property where illegal clearing occurs for three years.]

**PREVIOUS RELEVANT BOARD ACTION:** N/A

**CONTRACT/AGREEMENT CHANGES:** N/A

**STAFF RECOMMENDATION:** Approve

**TOTAL COST:** NA

**BUDGETED:** Yes ☐ No ☐

**COST TO COUNTY:** NA

**SOURCE OF FUNDS:** NA

**REVENUE PRODUCING:** Yes ☐ No ☒ X **AMOUNT PER MONTH**        **YEAR**       

**APPROVED BY:** County Attorney ☐ OMB/Purchasing ☐ Risk Management ☐

**DIVISION DIRECTOR APPROVAL:**

*T. McGarra*  
Timothy J. McGarra, AICP

**DOCUMENTATION:** Included ☐ To follow ☒ X Not required ☐

**DISPOSITION:**                     

**AGENDA ITEM #** V3

*Revised*

*KMC*

# **BOCC STAFF REPORT**

## **MEMORANDUM**

**TO:** The Monroe County Board of County Commissioners  
**FROM:** K. Marlene Conaway  
**DATE:** May28, 2004  
**MEETING DATE:** June 16, 2004  
**RE:** REVISIONS TO MONROE COUNTY CODE, SECTION 9.5-119 and 9.5-346

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### **I. BACKGROUND**

Concerns have been raised by the public, the Monroe County Board of County Commissioners (BOCC) and County staff regarding the illegal clearing of environmentally sensitive lands and development occurring without the benefit of permit(s). As a result of these concerns, an ordinance to amend Section 6-29, Monroe County Code (MCC) was drafted and approved to increase the fees for after-the-fact land clearing permits, including the provision of mitigation fees for unlawful filling of wetlands.

In addition to the aforementioned ordinance, Growth Management Division staff were directed to prepare amendments to Section 9.5-119 (Environmental Restoration Standards), MCC, to strengthen the standards for restoration of habitat areas that are unlawfully cleared and as a result of that, staff has determined that changes in the transplantation requirements in Section 9.5-346 (Mitigation Standards and County Environmental Land Management and Restoration Fund), MCC, for on-site and off-site mitigation of cleared habitat areas are warranted in conjunction with the changes to Section 9.5-119.

### **II. ANALYSIS**

The illegal clearing of and ensuing development on environmentally sensitive lands in Monroe County has continued to occur in spite of fees and fines associated with after-the-fact permits. The existing fee schedule was determined to not be effective in preventing illegal clearing and development. The protection of environmentally sensitive lands is supported strongly by the Year 2010 Comprehensive Plan and evidenced by the proposed moratorium on development in certain Tier I lands.

This text amendment will provide for more effective standards for restoration of habitat areas, as well as to eliminate transplantation as a mitigation option and replace it with a

requirement for payment of mitigation fees into the county's "Restoration Fund", to be renamed the "Environmental Land Management and Restoration Fund. Additionally, this change will provide a dedicated revenue source for supporting the County's management of its conservation lands.

These changes are consistent with the Goals, Policies, and Objectives of the Year 2010 Comprehensive Plan. As an "Area of Critical State Concern", Monroe County is also governed by Chapters 9J-5 and 9J-12 of the Florida Administrative Code (F.A.C.) and Chapter 163 of the Florida Statutes. The proposed text amendment is consistent with 9J-5.013(2)(c) and 9J-5.013(3)(b). The proposed text amendment will further the following Principles for Guiding Development:

- To strengthen local government capabilities for managing land use and development so that local government is able to achieve these objectives without the continuation of the area of critical state concern designation; and
- To protect upland resources, tropical biological communities, freshwater wetlands, native tropical vegetation, dune ridges and beaches, wildlife and their habitat; and
- To limit the adverse impacts of development on the quality of water throughout the Florida Keys.

### **III. FINDINGS OF FACT**

1. A text amendment to Section 9.5-119, MCC, is needed to strengthen the restoration requirements and increase the mitigation requirements for the clearing of lands without a permit due to the continued occurrence of illegal clearing.
2. A text amendment to Section 9.5-346 is needed, in conjunction with the text amendment to Section 9.5-119, to eliminate transplantation as a mitigation option and replace transplantation with a requirement for payment of mitigation fees into the county's "Restoration Fund", hereby renamed "Environmental Land Management and Restoration Fund."
3. Staff finds that the proposed changes are consistent with Section 9.5-511(d)(5)b.(v) "recognition of a need for additional detail or comprehensiveness.
4. Staff finds the proposed changes to be consistent with the goals, objectives, and policies of the Monroe County Year 2010 Comprehensive Plan.
5. Staff finds the proposed changes consistent with F.A.C. Chapters 9J-5 and 9J-12, Florida Statutes, Chapter 163, and The Principles for Guiding Development.

### **IV PROPOSED TEXT**

See next page

**Section 1.** The title to Section 9.5-119 is hereby amended as follows:

**Sec. 9.5-119. Environmental restoration standards ~~and agreements~~.**<sup>1</sup>

**Section 2.** Section 9.5-119 (a), MCC, is hereby amended and reorganized into paragraphs (a) and (b) as follows:

(a) In the event any land clearing ~~occurs~~ is occurring on a site and ~~which such~~ clearing is outside the scope of any permit issued or for which no permit was issued, ~~then the building official or other authorized county official, shall issue a stop work order.~~<sup>2</sup> If any land clearing has occurred for which no permit has been issued, such activity shall be subject to code enforcement proceedings under chapter 6.3.<sup>3</sup> Except for issuance of an approved after-the-fact permit for restoration, the following permit application restrictions shall apply upon a stop work order, pursuant to chapter 6.0, or, a notice of violation pursuant to chapter 6.3, until the restoration conditions of paragraph (b) are met:<sup>4</sup>

(1) No application for a building permit application shall be processed or issued for the subject site, except as provided for in paragraph (c).

(2) No ROGO/NROGO application for the subject site shall be accepted.

(3) Any ROGO/NROGO application for the subject site currently in the system shall automatically be withdrawn and, if it is resubmitted, it shall be considered a "new" application, requiring payment of appropriate fees and receiving a new controlling date.

(b) The stop work order, if applicable, ~~which~~ and the permitting restrictions of paragraph (a) above shall remain in full force and effect on the site, except where a notice of violation is not sustained by the special master, until all of the following restoration conditions have been met for those portions of the site that can not be permitted for clearing:<sup>5</sup>

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<sup>1</sup> Restoration agreements are being eliminated as the proposed language will not allow such agreements which allowed stop work orders to be removed or permitting even though restoration had not taken place.

<sup>2</sup> This revision provides clear authority to code enforcement officers or other duly authorized County officials to place stop work orders.

<sup>3</sup> This revised language reflects the fact that often times unlawfully clearing has already occurred before a stop work order can be placed.

<sup>4</sup> The penalties for unlawful clearing have been increased to include removal from the permit allocation system and halt on any work or permitting until restoration is completed.

<sup>5</sup> This language specifically refers to those areas unlawfully cleared that can not be permitted and must be restored, which would be accomplished through an after-the-fact permit. In conjunction with paragraph (c),

- (1) Restoration of the site to its pre-violation grade in accordance with a restoration site plan approved by the county biologist.
- (2) Replacement of the trees, shrubs, and groundcovers on the unlawfully cleared site with native plant species as appropriate to the site unlawfully cleared and, payment of a mitigation fee pursuant to sec. 9.5-346 to compensate for the environmental damage for removal of those native plants.<sup>6</sup> The trees shall be of a size and maturity commensurate to the unlawful clearing as determined by the county biologist. The native species mix shall consist of the approximate percentages of the predominant tree, shrub and groundcover species on the site unlawfully cleared prior to the violation, but if any endangered or threatened tree, shrub or groundcover species were unlawfully cleared, then those species shall be replaced with plants of a size and maturity commensurate to and related to the unlawful clearing as determined by the county biologist regardless of predominance.
- (3) All replanted trees, shrubs, and groundcovers shall be located on site ~~to the maximum extent possible within the same areas that were unlawfully cleared in accordance with an approved restoration site plan.~~<sup>7</sup> ~~If all of the replacement plants cannot be physically replanted on site, the remainder shall be donated to the county to restore or manager public lands or, at the discretion of the county, to a willing government agency or public or private conservation group to restore public lands . Alternatively, an amount of money equal to the rest of the replacement cost may be placed in an escrow account to be used by the county to restore or manage public lands, or, at the discretion of the county, by a willing government agency or a public or private conservation group for off-site replacement of the affected habitat. The county shall adopt administrative procedures for the management of the escrow account.~~
- (4) Except as expressly authorized by the county biologist pursuant to an approved phased restoration site plan, Aall invasive exotic plant species, as described in chapter VII, pages 163, 170, 178, and 183, volume II, Monroe County Comprehensive Land Use Plan on the most current Florida Exotic Pest Plant Council's list of Category I or II invasive exotic plants shall be continuously removed during the three (3) one-year period described in subsection (3) paragraph (d) below.

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it allows for an existing building permit to be revised or a building permit application submitted that would allow for clearing of those portions of the property unlawfully cleared.

<sup>6</sup> If land is unlawfully cleared, only that portion of the site that can not be permitted for clearing will need to be restored

<sup>7</sup> The concept of off-site transplantation is not viable based on the experience of Miami-Dade County and the Monroe County biologists.

- (5) A monetary guarantee for the restoration work as stipulated in paragraph (e) shall be provided in the form of a surety bond.

**Section 3.** A new Section 9.5-119 (c), MCC, is hereby created as follows:

(c) Where clearing of habitat is permitted, a building permit application or revised permit application may be processed provided such permit specifically involves the clearing of any portion of the land which has been unlawfully cleared. The subject building permit shall not be issued until the provisions of paragraph (b) above have been fully met for that portion of the site on which the unlawful clearing has occurred and which must be fully restored.<sup>8</sup>

**Section 4.** Section 9.5-119 (b), MCC, is hereby relabeled as paragraph (d) and amended as follows:<sup>9</sup>

(b)(d) At least eighty (80) percent of the trees replaced, as described in subsection sec. 9.5-119 (a)(b)(2), shall be viable at the end of a ~~survive for a one-~~ three (3) year period ~~after~~ from the date of the final inspection of the restoration work ~~last replanting~~; however, dead or dying trees may be replaced, subject to prior approval by the county biologist, during the ~~one-~~ three (3) year period in order to assure the eighty (80) percent minimum is met at the ~~year's end~~ of three years. The restoration work shall be inspected by the county biologist on an annual basis during the three-year period. He may direct that dead or dying trees be replaced as he deems necessary to ensure the eighty (80) percent standard will be met at the end of the three years. All invasive exotic plant species, as described in Volume I, Monroe County Comprehensive Plan- sec. 9.5-119 (a)(4) above, shall be continuously removed during the ~~one-~~ three (3) year period described above, unless the county biologist directs otherwise.

**Section 5.** Section 9.5-119 (c), MCC, is hereby relabeled as paragraph (e) and amended as follows:

(c) ~~In lieu of completion of the restoration described in subsections (a) and (b), the building official may lift the stop work order if the following terms and conditions are met:~~

- (1) ~~The permit holder shall enter into a binding restoration agreement mutually covenanting with the county that, in consideration for the lifting of the stop work order, the permit holder will restore the unlawfully cleared property in the manner described in subsections (a) and (b) according to the schedule required by the building official. The building~~

<sup>8</sup> This provision recognizes the need to allow for revisions to an existing permit or submittal of a permit application to authorize after-the-fact clearing. Even if these permit holders were not required to restore any of the property, they would still face monetary penalties under the provisions of Section 6-29, MCC.

<sup>9</sup> The one-year time period has been expanded to three-years, which is a much more realistic time period to ensure plant growth and viability.

~~official is hereby authorized to enter into such an agreement on behalf of the county.~~

(e) The permit holder shall be required through a surety bond, to guarantee the satisfactory completion of the restoration work in accordance with the approved restoration site plan and the survival of at least eighty (80) percent of the replanted trees for a period of at least three (3) years after the issuance of the after-the-fact permit for the restoration work.<sup>10</sup>

(1) *Guarantee amount:* The amount of the restoration guarantee shall cover the full costs of the restoration work described in sec. 9.5-119 (b) (1) through (4). The estimated costs of the restoration described in sec. 9.5-119 (b) shall be the sum of a and b, below:<sup>11</sup>

a. One hundred (100) percent of the estimated cost of the restoration described in ~~subsection~~ sec. 9.5-119 (a)(b)(1) as estimated by the county's ~~department of public works engineer~~; or alternatively, one hundred- ~~fifty (100)~~ (150) percent of the price of a binding contract for the restoration work required by ~~subsection~~ sec. 9.5-119 (a)(b)(1) entered into with a contractor qualified to perform such work.

b. One hundred (100) percent of the estimated cost, as estimated by the building official, of performing the restoration work described in ~~subsection (a)~~ sec. 9.5-119(b)(2) through (4); or, alternatively, one hundred-~~fifty (100)~~ (150) percent of the price of a binding contract for the restoration work described in ~~subsection (1)~~ sec. 9.5-119 (b)(2) through (4) entered into with a Florida licensed landscape architect.

~~a. Letter of credit: The permit holder may file a straight commercial letter of credit, in a form acceptable to the county attorney. The letter of credit must provide that the issuing financial institution will pay to the county, or as the county directs, following declaration of a default, such amounts as may be necessary to complete the restoration according to the terms of the agreement. The letter shall be irrevocable for twenty-four (24) months from the date of the restoration agreement but may, at the discretion of the building official, be reduced downward as work is completed; but in no event shall the final ten (10) percent be released until the~~

<sup>10</sup> The current regulations do not require monetary guarantees except in the case of a restoration agreement which have been eliminated in the proposed ordinance. This guarantee is needed to ensure restoration is completed and the survivability of the replacement plants is ensured.

<sup>11</sup> The estimated costs to base the amount of surety bond is higher for amounts based on construction contracts to provide some protection for the County in case of a default where the construction contracts may not reflect true costs.



~~one-year survivability rate and exotic maintenance requirements of subsection (a)(3) and (4) have been met. The permit holder shall also agree to release the issuer from all payments made after the declaration of default by the board of county commissioners.~~

b.(2) *Surety bond:* The surety bond shall be in a form and with a bonding company approved by the county attorney. The bond shall be payable to the county in the amount of estimated total cost for restoration work as calculated in sec.9.5-119(e)(1) above, and enforceable, on or beyond a date ~~twelve (12)~~ thirty-six (36) months from the date of the ~~restoration agreement~~ permit issued for the restoration work. Release of any bond shall be conditioned upon final approval by the ~~building official~~ county biologist of the restoration work.<sup>12</sup>

c. ~~Cash escrow: An escrow account may be established in the amount required with a federally insured financial institution (hereinafter "escrowee") in a form which meets the approval of the county attorney. The account shall be administered by the escrowee in accordance with an escrow agreement entered into between the county and the permit holder. The building official is hereby authorized to enter into such an agreement on behalf of the county. The agreement shall, at minimum require:~~

1) ~~The escrowee will pay to the county, or as the county directs, following the declaration of a default, such amounts as may be necessary to complete the restoration according to the terms of the restoration agreement. The sum held in the account may be reduced downward by the building official, but in no event shall the final ten (10) percent be disbursed until the one-year survivability rate and exotic maintenance requirements of subsection (a)(3) and (4) have been met.~~

2) ~~The permit holder shall agree to release the escrowee from all payments made pursuant to an order of the building official after a default has been declared by the board of county commissioners.~~

(4) ~~In the event the building official determines that the permit holder has failed to perform the restoration work according to the terms of the restoration agreement or has failed to comply with the terms of the guarantees herein above set forth, the building official, in consultation~~

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<sup>12</sup> The options for use of a cash escrow and letter of credit have been eliminated and replaced with surety bond which is easier to administer and ensures funds will be available even if property owner goes out of business.

~~with the county attorney, may take one (1) or more of the following actions:~~

- ~~a. In the case of the cash escrow or letter of credit, the building official shall advise the permit holder, in writing, of the failure, giving the permit holder thirty (30) days to cure the default. If the permit holder fails to cure the default, the building official may recommend to the board of county commissioners that they declare the permit holder in default, and, upon written notification to the escrowee or issuer of the letter of credit, some or all of the sums of money on deposit pursuant to the escrow agreement or letter of credit shall be disbursed by the escrowee or issuer solely upon the authorization of the building official, and the escrowee or issuer shall be released by the permit holder as to such payment(s).~~
- ~~b. In the event of a surety bond, the building official shall inform the bonding company in writing of the default and request that it take the necessary actions to complete the required restoration.~~

(3) *Default:* All guarantees shall provide that if the permit holder failed to complete required restoration work accordance with the restoration site plan and failed to comply with the requirements of sec. 9.5-119 (d), the director of planning in consultation with the county attorney, may take the following action: Inform the bonding company in writing of default by the permit holder and request that it take necessary actions to complete the required improvements.<sup>13</sup>

**Section 6.** Section 9.5-346 ("Transplantation Plan") MCC, is hereby deleted and replaced with the following:<sup>14</sup>

**Section 9.5-346. Mitigation standards and county environmental land management and restoration fund.**

(a) *Mitigation standards:* The removal of any listed threatened, endangered, commercially exploited, and regionally important native plant species and all native trees with a diameter at breast height (DBH) of greater than four (4) inches shall require payment to the County Environmental Land Management and Restoration Fund in an

<sup>13</sup> This default language has been added similar to language for subdivision improvements in Section 9.5-85.

<sup>14</sup> The entire concept of on-site transplantation, except for restoration, and off-site transplantation has been eliminated due to the problems with plant survivability. Instead, the concept is that for any clearing of habitat, the permit holder will have to pay a mitigation fee into the County's environmental land management and restoration fund. The County will be in a better position to direct such funds to where they are needed the most. The three-to-one requirement for replacement of native plants within cleared areas is consistent with Comprehensive Policy 205.2.9 for off-site transplantation.

amount sufficient to replace each removed plant or tree on a two to one (2:1) basis.<sup>15</sup> The number, species, and sizes of trees and plants to be mitigated shall be identified in an existing conditions report approved by the county biologist in accordance with the minimum size requirements set forth in sec. 9.5-367.

(b) *Mitigation fees determination:* The mitigation fee shall be based on the replacement cost of the specific plants and trees. The costs for replacement plants and trees shall be based upon a price schedule maintained and updated annually by the county biologist. This schedule shall be based on price quotes by at least three (3) private plant nurseries within Monroe County or Miami-Dade County.

(c) *County environmental land management and restoration fund:* The board of county commissioners may establish a special revenue fund called the Monroe County Environmental Land Management and Restoration Fund. Revenues and fees deposited in this fund shall be used for restoration and management activities of public resource protection and conservation lands, as specifically detailed by resolution of the board. of county commissioners.<sup>16</sup>

**V. RECOMMENDATION:** The Planning and Environmental Resources staff recommends approval of this text amendment.

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<sup>15</sup> The existing off-site transplantation requirement is 3 to 1; however, as on-site transplantation is no longer an option, for purposes of mitigation the 2 to 1 ratio is more than sufficient to cover the costs of replacement and installation.

<sup>16</sup> This codifies the establishment of an environmental land management and restoration fund, which has already been authorized by resolution of the Board of County Commissioners. Funds from this account will not be used for land acquisition purposes and will be detailed by the Board of County Commissioners through policy resolutions.

## MEMORANDUM

**TO:** The Monroe County Board of County Commissioners.

**FROM:** K. Marlene Conaway, *KMC*  
Director of Planning and Environmental Resources.

**DATE:** June 10, 2004.

**MEETING DATE:** June 16, 2004.

**RE:** REVISIONS TO MONROE COUNTY CODE, SECTION 9.5-119 and 9.5-346.

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The Planning Commission, meeting at its regular scheduled meeting of June 9, 2004, voted to adopt an amended version of the ordinance prepared by staff. The Planning Commission has included additional language to Section 9.5-319 to strengthen the ordinance by including a three-year freeze on any permits associated with property where illegal clearing has occurred or where legal clearing has exceeded the permitted amount of square feet by more than ten (10%) percent.

A revised version of the complete ordinance contained in the original Board of County Commissioner's packet is included in this packet. Provided below are the two amended paragraphs for review.

The proposed revisions are shown in strike-through/underline format. The strike-through language is to be eliminated and the underlined language shall be added. The Planning Commission recommendations are indicated by shading.

### Section 2.

#### Section 9.5-119

Section 9.5-119 (b) is amended as follows:

- (b) The stop work order, if applicable, ~~which~~ and the permitting restrictions of paragraph (a) above and (c) below shall remain in full force and effect on the site, except where a notice of violation is not sustained by the special master.

**Section 3.** A new Section 9.5-119 (c), MCC, is hereby created as follows:  
Section 9.5-119(c) replaces the previous (c)

(c) Where clearing is done without benefit of a permit or where clearing exceeds the permitted amount of square feet by more than ten (10%) percent, no permits shall be issued for the property for a period of three (3) years from the date of the final inspection of the restoration work as described in (d) below.

**ORDINANCE  
RECOMMENDED  
BY STAFF**

**ORDINANCE NO. -2004**

**AN ORDINANCE BY THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS AMENDING SECTIONS 9.5-119 AND 9.5-346, MONROE COUNTY CODE; REVISING REQUIREMENTS FOR RESTORATION OF LANDS CLEARED WITHOUT BENEFIT OF PERMIT OR BEYOND SCOPE OF A PERMIT; DELETING TRANSPLANTATION REQUIREMENTS AND SUBSTITUTING WITH REQUIREMENTS FOR PAYMENT INTO THE MONROE COUNTY ENVIRONMENTAL LAND MANAGEMENT AND RESTORATION FUND; PROVIDING FOR THE REPEAL OF ALL ORDINANCES INCONSISTENT HEREWITH; PROVIDING FOR INCORPORATION INTO THE MONROE COUNTY CODE OF ORDINANCES; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the Board of County Commissioners have approved an ordinance amending Section 6-29, Monroe County Code (MCC), to increase the fees for after-the-fact permits, including the provision of mitigation fees for unlawful filling of wetlands; and,

**WHEREAS**, the Growth Management Division staff was further directed to prepare amendments to Section 9.5-119, MCC, to strengthen the standards for restoration of habitat areas that are unlawfully cleared without benefit of a permit; and,

**WHEREAS**, in reviewing Section 9.5-119, MCC, and related regulations, the Growth Management Division staff determined that changes in the transplantation requirements in Section 9.5-346, MCC, for on-site and off-site mitigation of cleared habitat areas were warranted as transplantation has not been proven to be a successful or cost-effective measure; and,

**WHEREAS**, the Growth Management Division staff has prepared amendments to Section 9.5-119, MCC, to strengthen the restoration requirements and increase the mitigation requirements for the clearing of lands without benefit of a permit; and,

**WHEREAS**, the staff has also prepared amendments to Section 9.5-346, MCC, to replace transplantation as a mitigation option in the clearing of habitat with a requirement for payment of mitigation fees into the county's "Restoration Fund", now renamed the "Environmental Land Management and Restoration Fund"; and,

**WHEREAS**, these proposed amendments to the restoration standards of the county's regulations are intended to ensure that such lands are fully restored and to discourage unlawful clearing activity and to provide a dedicated funding source for restoration and management of public conservation land; and,

**WHEREAS**, the Board of County Commissioners has reviewed the proposed amendments to Sections 9.5-119 and 9.5-346, recommended by the Growth Management Division; now therefore,

**BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF MONROE COUNTY, FLORIDA:**

**Section 1.** The title to Section 9.5-119 is hereby amended as follows:

**Sec. 9.5-119. Environmental restoration standards and agreements.<sup>1</sup>**

**Section 2.** Section 9.5-119 (a), MCC, is hereby amended and reorganized into paragraphs (a) and (b) as follows:

(a) In the event any land clearing occurs is occurring on a site and which such clearing is outside the scope of any permit issued or for which no permit was issued, then the building official or other authorized county official, shall issue a stop work order.<sup>2</sup> If any land clearing has occurred for which no permit has been issued, such activity shall be subject to code enforcement proceedings under chapter 6.3.<sup>3</sup> Except for issuance of an approved after-the-fact permit for restoration, the following permit application restrictions shall apply upon a stop work order, pursuant to chapter 6.0, or, a notice of violation pursuant to chapter 6.3, until the restoration conditions of paragraph (b) are met.<sup>4</sup>

(1) No application for a building permit application shall be processed or issued for the subject site, except as provided for in paragraph (c).

(2) No ROGO/NROGO application for the subject site shall be accepted.

(3) Any ROGO/NROGO application for the subject site currently in the system shall automatically be withdrawn and, if it is resubmitted, it shall be considered a "new" application, requiring payment of appropriate fees and receiving a new controlling date.

(b) The stop work order, if applicable, ~~which~~ and the permitting restrictions of paragraph (a) above shall remain in full force and effect on the site, except where a notice of violation is not sustained by the special master, until all of the following restoration conditions have been met for those portions of the site that can not be permitted for clearing:<sup>5</sup>

(1) Restoration of the site to its pre-violation grade in accordance with a restoration site plan approved by the county biologist.

(2) Replacement of the trees, shrubs, and groundcovers on the unlawfully cleared site with native plant species as appropriate to the site unlawfully cleared and, payment of a mitigation fee pursuant to sec. 9.5-346 to compensate for the environmental damage for removal of those native plants.<sup>6</sup> The trees shall be of a size and maturity commensurate to the unlawful clearing as determined by the county biologist. The native species mix

<sup>1</sup> Restoration agreements are being eliminated as the proposed language will not allow such agreements which allowed stop work orders to be removed or permitting even though restoration had not taken place.

<sup>2</sup> This revision provides clear authority to code enforcement officers or other duly authorized County officials to place stop work orders.

<sup>3</sup> This revised language reflects the fact that often times unlawfully clearing has already occurred before a stop work order can be placed.

<sup>4</sup> The penalties for unlawful clearing have been increased to include removal from the permit allocation system and halt on any work or permitting until restoration is completed.

<sup>5</sup> This language specifically refers to those areas unlawfully cleared that can not be permitted and must be restored, which would be accomplished through an after-the-fact permit. In conjunction with paragraph (c), it allows for an existing building permit to be revised or a building permit application submitted that would allow for clearing of those portions of the property unlawfully cleared.

<sup>6</sup> If land is unlawfully cleared, only that portion of the site that can not be permitted for clearing will need to be restored

shall consist of the approximate percentages of the predominant tree, shrub and groundcover species on the site unlawfully cleared prior to the violation, but if any endangered or threatened tree, shrub or groundcover species were unlawfully cleared, then those species shall be replaced with plants of a size and maturity commensurate to and related to the unlawful clearing as determined by the county biologist regardless of predominance.

- (3) All replanted trees, shrubs, and groundcovers shall be located on site to the maximum extent possible within the same areas that were unlawfully cleared in accordance with an approved restoration site plan.<sup>7</sup> ~~If all of the replacement plants cannot be physically replanted on site, the remainder shall be donated to the county to restore or manager public lands or, at the discretion of the county, to a willing government agency or public or private conservation group to restore public lands. Alternatively, an amount of money equal to the rest of the replacement cost may be placed in an escrow account to be used by the county to restore or manage public lands, or, at the discretion of the county, by a willing government agency or a public or private conservation group for off-site replacement of the affected habitat. The county shall adopt administrative procedures for the management of the escrow account.~~
- (4) Except as expressively authorized by the county biologist pursuant to an approved phased restoration site plan, All invasive exotic plant species, as described in chapter VII, pages 163, 170, 178, and 183, volume II, Monroe County Comprehensive Land Use Plan on the most current Florida Exotic Pest Plant Council's list of Category I or II invasive exotic plants shall be continuously removed during the three (3) one-year period described in subsection (3) paragraph (d) below.
- (5) A monetary guarantee for the restoration work as stipulated in paragraph (e) shall be provided in the form of a surety bond.

**Section 3.** A new Section 9.5-119 (c), MCC, is hereby created as follows:

(c) Where clearing of habitat is permitted, a building permit application or revised permit application may be processed provided such permit specifically involves the clearing of any portion of the land which has been unlawfully cleared. The subject building permit shall not be issued until the provisions of paragraph (b) above have been fully met for that portion of the site on which the unlawful clearing has occurred and which must be fully restored.<sup>8</sup>

**Section 4.** Section 9.5-119 (b), MCC, is hereby relabeled as paragraph (d) and amended as follows:<sup>9</sup>

(b)(d) At least eighty (80) percent of the trees replaced, as described in subsection sec. 9.5-119 (a)(b)(2), shall be viable at the end of a survive for a one- three (3) year period after from the date of

<sup>7</sup> The concept of off-site transplantation is not viable based on the experience of Miami-Dade County and the Monroe County biologists.

<sup>8</sup> This provision recognizes the need to allow for revisions to an existing permit or submittal of a permit application to authorize after-the-fact clearing. Even if these permit holders were not required to restore any of the property, they would still face monetary penalties under the provisions of Section 6-29, MCC.

<sup>9</sup> The one-year time period has been expanded to three-years, which is a much more realistic time period to ensure plant growth and viability.



the final inspection of the restoration work ~~last replanting~~; however, dead or dying trees may be replaced, subject to prior approval by the county biologist, during the ~~one- three (3)~~ year period in order to assure the eighty (80) percent minimum is met at the ~~year's end of three years~~. The restoration work shall be inspected by the county biologist on an annual basis during the three-year period. He may direct that dead or dying trees be replaced as he deems necessary to ensure the eighty (80) percent standard will be met at the end of the three years. All invasive exotic plant species, as described in Volume I, Monroe County Comprehensive Plan sec. 9.5-119 (a)(4) above, shall be continuously removed during the ~~one- three (3)~~ year period described above, unless the county biologist directs otherwise.

**Section 5.** Section 9.5-119 (c), MCC, is hereby relabeled as paragraph (e) and amended as follows:

~~(c)~~ In lieu of completion of the restoration described in subsections (a) and (b), the building official may lift the stop work order if the following terms and conditions are met:

~~(1) The permit holder shall enter into a binding restoration agreement mutually covenanting with the county that, in consideration for the lifting of the stop work order, the permit holder will restore the unlawfully cleared property in the manner described in subsections (a) and (b) according to the schedule required by the building official. The building official is hereby authorized to enter into such an agreement on behalf of the county.~~

(e) The permit holder shall be required through a surety bond, to guarantee the satisfactory completion of the restoration work in accordance with the approved restoration site plan and the survival of at least eighty (80) percent of the replanted trees for a period of at least three (3) years after the issuance of the after-the-fact permit for the restoration work.<sup>10</sup>

(1) *Guarantee amount:* The amount of the restoration guarantee shall cover the full costs of the restoration work described in sec. 9.5-119 (b) (1) through (4). The estimated costs of the restoration described in sec. 9.5-119 (b) shall be the sum of a and b, below.<sup>11</sup>

- a. One hundred (100) percent of the estimated cost of the restoration described in subsection sec. 9.5-119 (a)(b)(1) as estimated by the county's ~~department of public works engineer~~; or alternatively, one hundred- fifty (100) (150) percent of the price of a binding contract for the restoration work required by subsection sec. 9.5-119 (a)(b)(1) entered into with a contractor qualified to perform such work.
- b. One hundred (100) percent of the estimated cost, as estimated by the building official, of performing the restoration work described in subsection ~~(a)~~ sec. 9.5-119(b)(2) through (4); or, alternatively, one hundred-fifty (100) (150) percent of the price of a binding contract for the restoration work described in subsection

<sup>10</sup> The current regulations do not require monetary guarantees except in the case of a restoration agreement which have been eliminated in the proposed ordinance. This guarantee is needed to ensure restoration is completed and the survivability of the replacement plants is ensured.

<sup>11</sup> The estimated costs to base the amount of surety bond is higher for amounts based on construction contracts to provide some protection for the County in case of a default where the construction contracts may not reflect true costs.

(1) sec. 9.5-119 (b)(2) through (4) entered into with a Florida licensed landscape architect.

- a. ~~Letter of credit: The permit holder may file a straight commercial letter of credit, in a form acceptable to the county attorney. The letter of credit must provide that the issuing financial institution will pay to the county, or as the county directs, following declaration of a default, such amounts as may be necessary to complete the restoration according to the terms of the agreement. The letter shall be irrevocable for twenty-four (24) months from the date of the restoration agreement but may, at the discretion of the building official, be reduced downward as work is completed; but in no event shall the final ten (10) percent be released until the one year survivability rate and exotic maintenance requirements of subsection (a)(3) and (4) have been met. The permit holder shall also agree to release the issuer from all payments made after the declaration of default by the board of county commissioners.~~
- b.(2) Surety bond: The surety bond shall be in a form and with a bonding company approved by the county attorney. The bond shall be payable to the county in the amount of estimated total cost for restoration work as calculated in sec.9.5-119(e)(1) above, and enforceable, on or beyond a date twelve (12) thirty-six (36) months from the date of the restoration agreement permit issued for the restoration work. Release of any bond shall be conditioned upon final approval by the building official county biologist of the restoration work.<sup>12</sup>
- c. ~~Cash escrow: An escrow account may be established in the amount required with a federally insured financial institution (hereinafter "escrowee") in a form which meets the approval of the county attorney. The account shall be administered by the escrowee in accordance with an escrow agreement entered into between the county and the permit holder. The building official is hereby authorized to enter into such an agreement on behalf of the county. The agreement shall, at minimum require:~~
- 1) ~~The escrowee will pay to the county, or as the county directs, following the declaration of a default, such amounts as may be necessary to complete the restoration according to the terms of the restoration agreement. The sum held in the account may be reduced downward by the building official, but in no event shall the final ten (10) percent be disbursed until the one year survivability rate and exotic maintenance requirements of subsection (a)(3) and (4) have been met.~~
- 2) ~~The permit holder shall agree to release the escrowee from all payments made pursuant to an order of the building official after a default has been declared by the board of county commissioners.~~
- (4) ~~In the event the building official determines that the permit holder has failed to perform the restoration work according to the terms of the restoration agreement or has failed to~~

<sup>12</sup> The options for use of a cash escrow and letter of credit have been eliminated and replaced with surety bond which is easier to administer and ensures funds will be available even if property owner goes out of business.

~~comply with the terms of the guarantees herein above set forth, the building official, in consultation with the county attorney, may take one (1) or more of the following actions:~~

- ~~a. In the case of the cash escrow or letter of credit, the building official shall advise the permit holder, in writing, of the failure, giving the permit holder thirty (30) days to cure the default. If the permit holder fails to cure the default, the building official may recommend to the board of county commissioners that they declare the permit holder in default, and, upon written notification to the escrowee or issuer of the letter of credit, some or all of the sums of money on deposit pursuant to the escrow agreement or letter of credit shall be disbursed by the escrowee or issuer solely upon the authorization of the building official, and the escrowee or issuer shall be released by the permit holder as to such payment(s).~~
- ~~b. In the event of a surety bond, the building official shall inform the bonding company in writing of the default and request that it take the necessary actions to complete the required restoration.~~

(3) *Default:* All guarantees shall provide that if the permit holder failed to complete required restoration work accordance with the restoration site plan and failed to comply with the requirements of sec. 9.5-119 (d), the director of planning in consultation with the county attorney, may take the following action: Inform the bonding company in writing of default by the permit holder and request that it take necessary actions to complete the required improvements.<sup>13</sup>

Section 6. Section 9.5-346 ("Transplantation Plan") MCC, is hereby deleted and replaced with the following:<sup>14</sup>

**Section 9.5-346. Mitigation standards and county environmental land management and restoration fund.**

(a) *Mitigation standards:* The removal of any listed threatened, endangered, commercially exploited, and regionally important native plant species and all native trees with a diameter at breast height (DBH) of greater than four (4) inches shall require payment to the County Environmental Land Management and Restoration Fund in an amount sufficient to replace each removed plant or tree on a two to one (2:1) basis.<sup>15</sup> The number, species, and sizes of trees and plants to be mitigated shall be identified in an existing conditions report approved by the county biologist in accordance with the minimum size requirements set forth in sec. 9.5-367.

(b) *Mitigation fees determination:* The mitigation fee shall be based on the replacement cost of the specific plants and trees. The costs for replacement plants and trees shall be based upon a

<sup>13</sup> This default language has been added similar to language for subdivision improvements in Section 9.5-85.

<sup>14</sup> The entire concept of on-site transplantation, except for restoration, and off-site transplantation has been eliminated due to the problems with plant survivability. Instead, the concept is that for any clearing of habitat, the permit holder will have to pay a mitigation fee into the County's environmental land management and restoration fund. The County will be in a better position to direct such funds to where they are needed the most. The three-to-one requirement for replacement of native plants within cleared areas is consistent with Comprehensive Policy 205.2.9 for off-site transplantation.

<sup>15</sup> The existing off-site transplantation requirement is 3 to 1; however, as on-site transplantation is no longer an option, for purposes of mitigation the 2 to 1 ratio is more than sufficient to cover the costs of replacement and installation.

price schedule maintained and updated annually by the county biologist. This schedule shall be based on price quotes by at least three (3) private plant nurseries within Monroe County or Miami-Dade County.

(c) *County environmental land management and restoration fund:* The board of county commissioners may establish a special revenue fund called the Monroe County Environmental Land Management and Restoration Fund. Revenues and fees deposited in this fund shall be used for restoration and management activities of public resource protection and conservation lands, as specifically detailed by resolution of the board. of county commissioners.<sup>16</sup>

**PASSED AND ADOPTED** by the Board of County Commissioners of Monroe County, Florida, at a regular meeting of said Board held on the \_\_\_\_\_ day of \_\_\_\_\_, AD, 2004.


Mayor Murray Nelson \_\_\_\_\_  
Mayor Pro Tem David Rice \_\_\_\_\_  
Commissioner Charles "Sonny" McCoy \_\_\_\_\_  
Commissioner George Neugent \_\_\_\_\_  
Commissioner Dixie Spehar \_\_\_\_\_

(SEAL)  
Attest: DANNY L. KOLHAGE, Clerk

BOARD OF COUNTY COMMISSIONERS  
OF MONROE COUNTY, FLORIDA

By \_\_\_\_\_  
Deputy Clerk

By \_\_\_\_\_  
Mayor/Chairperson

MONROE COUNTY ATTORNEY  
APPROVED AS TO FORM:  
  
JOHN R. COLLINS  
COUNTY ATTORNEY  
Date: 06/03/04

<sup>16</sup> This codifies the establishment of an environmental land management and restoration fund, which has already been authorized by resolution of the Board of County Commissioners. Funds from this account will not be used for land acquisition purposes and will be detailed by the Board of County Commissioners through policy resolutions.  
Document)5

**ORDINANCE  
RECOMMENDED  
BY  
PLANNING COMMISSION**

**ORDINANCE NO. -2004**

**AN ORDINANCE BY THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS AMENDING SECTIONS 9.5-119 AND 9.5-346, MONROE COUNTY CODE; REVISING REQUIREMENTS FOR RESTORATION OF LANDS CLEARED WITHOUT BENEFIT OF PERMIT OR BEYOND SCOPE OF A PERMIT; DELETING TRANSPLANTATION REQUIREMENTS AND SUBSTITUTING WITH REQUIREMENTS FOR PAYMENT INTO THE MONROE COUNTY ENVIRONMENTAL LAND MANAGEMENT AND RESTORATION FUND; PROVIDING FOR THE REPEAL OF ALL ORDINANCES INCONSISTENT HERewith; PROVIDING FOR INCORPORATION INTO THE MONROE COUNTY CODE OF ORDINANCES; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.**

WHEREAS, the Board of County Commissioners have approved an ordinance amending Section 6-29, Monroe County Code (MCC), to increase the fees for after-the-fact permits, including the provision of mitigation fees for unlawful filling of wetlands; and,

WHEREAS, the Growth Management Division staff was further directed to prepare amendments to Section 9.5-119, MCC, to strengthen the standards for restoration of habitat areas that are unlawfully cleared without benefit of a permit; and,

WHEREAS, in reviewing Section 9.5-119, MCC, and related regulations, the Growth Management Division staff determined that changes in the transplantation requirements in Section 9.5-346, MCC, for on-site and off-site mitigation of cleared habitat areas were warranted as transplantation has not been proven to be a successful or cost-effective measure; and,

WHEREAS, the Growth Management Division staff has prepared amendments to Section 9.5-119, MCC, to strengthen the restoration requirements and increase the mitigation requirements for the clearing of lands without benefit of a permit; and,

WHEREAS, the staff has also prepared amendments to Section 9.5-346, MCC, to replace transplantation as a mitigation option in the clearing of habitat with a requirement for payment of mitigation fees into the county's "Restoration Fund", now renamed the "Environmental Land Management and Restoration Fund"; and,

WHEREAS, these proposed amendments to the restoration standards of the county's regulations are intended to ensure that such lands are fully restored and to discourage unlawful clearing activity and to provide a dedicated funding source for restoration and management of public conservation land; and,

WHEREAS, the Board of County Commissioners has reviewed the proposed amendments to Sections 9.5-119 and 9.5-346, recommended by the Growth Management Division;

The proposed revisions are shown in strike-through/underline format. The strike-through language is to be eliminated and the underlined language shall be added.

Section 1. The title to Section 9.5-119 is hereby amended as follows:

**Sec. 9.5-119. Environmental restoration standards ~~and agreements~~.<sup>1</sup>**

Section 2. Section 9.5-119 (a), MCC, is hereby amended and reorganized into paragraphs (a) and (b) as follows:

(a) In the event any land clearing ~~occurs~~ is occurring on a site ~~and which such~~ clearing is outside the scope of any permit issued or for which no permit was issued, ~~then~~ the building official or other authorized county official, shall issue a stop work order.<sup>2</sup> If any land clearing has occurred for which no permit has been issued, such activity shall be subject to code enforcement proceedings under chapter 6.3.<sup>3</sup> Except for issuance of an approved after-the-fact permit for restoration, the following permit application restrictions shall apply upon a stop work order, pursuant to chapter 6.0, or, a notice of violation pursuant to chapter 6.3, until the restoration conditions of paragraph (b) are met.<sup>4</sup>

(1) No application for a building permit application shall be processed or issued for the subject site, except as provided for in paragraph (c).

(2) No ROGO/NROGO application for the subject site shall be accepted.

(3) Any ROGO/NROGO application for the subject site currently in the system shall automatically be withdrawn and, if it is resubmitted, it shall be considered a "new" application, requiring payment of appropriate fees and receiving a new controlling date.

(b) The stop work order, if applicable, ~~which~~ and the permitting restrictions of paragraph (a) above and (c) below shall remain in full force and effect on the site, except where a notice of violation is not sustained by the special master, until all of the

<sup>1</sup> Restoration agreements are being eliminated as the proposed language will not allow such agreements which allowed stop work orders to be removed or permitting even though restoration had not taken place.

<sup>2</sup> This revision provides clear authority to code enforcement officers or other duly authorized County officials to place stop work orders.

<sup>3</sup> This revised language reflects the fact that often times unlawfully clearing has already occurred before a stop work order can be placed.

<sup>4</sup> The penalties for unlawful clearing have been increased to include removal from the permit allocation system and halt on any work or permitting until restoration is completed.

following restoration conditions have been met for those portions of the site that can not be permitted for clearing:<sup>5</sup>

- (1) Restoration of the site to its pre-violation grade in accordance with a restoration site plan approved by the county biologist.
- (2) Replacement of the trees, shrubs, and groundcovers on the unlawfully cleared site with native plant species as appropriate to the site unlawfully cleared and, payment of a mitigation fee pursuant to sec. 9.5-346 to compensate for the environmental damage for removal of those native plants.<sup>6</sup> The trees shall be of a size and maturity commensurate to the unlawful clearing as determined by the county biologist. The native species mix shall consist of the approximate percentages of the predominant tree, shrub and groundcover species on the site unlawfully cleared prior to the violation, but if any endangered or threatened tree, shrub or groundcover species were unlawfully cleared, then those species shall be replaced with plants of a size and maturity commensurate to and related to the unlawful clearing as determined by the county biologist regardless of predominance.
- (3) All replanted trees, shrubs, and groundcovers shall be located on site to the maximum extent possible within the same areas that were unlawfully cleared in accordance with an approved restoration site plan.<sup>7</sup> ~~If all of the replacement plants cannot be physically replanted on site, the remainder shall be donated to the county to restore or manager public lands or, at the discretion of the county, to a willing government agency or public or private conservation group to restore public lands. Alternatively, an amount of money equal to the rest of the replacement cost may be placed in an escrow account to be used by the county to restore or manage public lands, or, at the discretion of the county, by a willing government agency or a public or private conservation group for off-site replacement of the affected habitat. The county shall adopt administrative procedures for the management of the escrow account.~~
- (4) Except as expressly authorized by the county biologist pursuant to an approved phased restoration site plan, All invasive exotic plant species, as described in chapter VII, pages 163, 170, 178, and 183, volume II, Monroe County Comprehensive Land Use Plan on the most current Florida Exotic Pest Plant Council's list of Category I or II invasive exotic

<sup>5</sup> This language specifically refers to those areas unlawfully cleared that can not be permitted and must be restored, which would be accomplished through an after-the-fact permit. In conjunction with paragraph (c), it allows for an existing building permit to be revised or a building permit application submitted that would allow for clearing of those portions of the property unlawfully cleared.

<sup>6</sup> If land is unlawfully cleared, only that portion of the site that can not be permitted for clearing will need to be restored

<sup>7</sup> The concept of off-site transplantation is not viable based on the experience of Miami-Dade County and the Monroe County biologists.



plants shall be continuously removed during the ~~three~~ (3) one-year period described in subsection (3) paragraph (d) below.

(5) A monetary guarantee for the restoration work as stipulated in paragraph (e) shall be provided in the form of a surety bond.

**Section 3.** A new Section 9.5-119 (c), MCC, is hereby created as follows:

~~(e) Where clearing of habitat is permitted, a building permit application or revised permit application may be processed provided such permit specifically involves the clearing of any portion of the land which has been unlawfully cleared. The subject building permit shall not be issued until the provisions of paragraph (b) above have been fully met for that portion of the site on which the unlawful clearing has occurred and which must be fully restored.<sup>8</sup>~~

(c) Where clearing is done without benefit of a permit or where clearing exceeds the permitted amount of square feet by more than ten (10%) percent, no permits shall be issued on the property for a period of three years from the date of the final inspection of the restoration work as described in (d) below.

**Section 4.** Section 9.5-119 (b), MCC, is hereby relabeled as paragraph (d) and amended as follows:<sup>9</sup>

~~(b)(d)~~ At least eighty (80) percent of the trees replaced, as described in subsection sec. 9.5-119 ~~(a)(b)(2)~~, shall be viable at the end of a ~~survive for a one- three~~ (3) year period ~~after from~~ the date of the final inspection of the restoration work last replanting; however, dead or dying trees may be replaced, subject to prior approval by the county biologist, during the ~~one- three (3)~~ year period in order to assure the eighty (80) percent minimum is met at the ~~year's end of three years~~. The restoration work shall be inspected by the county biologist on an annual basis during the three-year period. He may direct that dead or dying trees be replaced as he deems necessary to ensure the eighty (80) percent standard will be met at the end of the three years. All invasive exotic plant species, as described in ~~Volume I, Monroe County Comprehensive Plan sec. 9.5-119 (a)(4) above~~, shall be continuously removed during the ~~one- three (3)~~ year period described above, unless the county biologist directs otherwise.

**Section 5.** Section 9.5-119 (c), MCC, is hereby relabeled as paragraph (e) and amended as follows:

<sup>8</sup> This provision recognizes the need to allow for revisions to an existing permit or submittal of a permit application to authorize after-the-fact clearing. Even if these permit holders were not required to restore any of the property, they would still face monetary penalties under the provisions of Section 6-29, MCC.

<sup>9</sup> The one-year time period has been expanded to three-years, which is a much more realistic time period to ensure plant growth and viability.

~~(c) In lieu of completion of the restoration described in subsections (a) and (b), the building official may lift the stop work order if the following terms and conditions are met:~~

- ~~(1) The permit holder shall enter into a binding restoration agreement mutually covenanteeing with the county that, in consideration for the lifting of the stop work order, the permit holder will restore the unlawfully cleared property in the manner described in subsections (a) and (b) according to the schedule required by the building official. The building official is hereby authorized to enter into such an agreement on behalf of the county.~~

(e) The permit holder shall be required through a surety bond, to guarantee the satisfactory completion of the restoration work in accordance with the approved restoration site plan and the survival of at least eighty (80) percent of the replanted trees for a period of at least three (3) years after the issuance of the after-the-fact permit for the restoration work.<sup>10</sup>

- (1) *Guarantee amount:* The amount of the restoration guarantee shall cover the full costs of the restoration work described in sec. 9.5-119 (b) (1) through (4). The estimated costs of the restoration described in sec. 9.5-119 (b) shall be the sum of a and b, below:<sup>11</sup>

- a. One hundred (100) percent of the estimated cost of the restoration described in ~~subsection sec. 9.5-119 (a)(b)(1)~~ as estimated by the county's department of public works engineer; or alternatively, one hundred- ~~fifty (100)~~ (150) percent of the price of a binding contract for the restoration work required by ~~subsection sec. 9.5-119 (a)(b)(1)~~ entered into with a contractor qualified to perform such work.
- b. One hundred (100) percent of the estimated cost, as estimated by the building official, of performing the restoration work described in ~~subsection (a) sec. 9.5-119(b)(2) through (4);~~ or, alternatively, one hundred-~~fifty (100)~~ (150) percent of the price of a binding contract for the restoration work described in ~~subsection (1) sec. 9.5-119 (b)(2) through (4)~~ entered into with a Florida licensed landscape architect.
- a. ~~Letter of credit: The permit holder may file a straight commercial letter of credit, in a form acceptable to the county attorney. The~~

<sup>10</sup> The current regulations do not require monetary guarantees except in the case of a restoration agreement which have been eliminated in the proposed ordinance. This guarantee is needed to ensure restoration is completed and the survivability of the replacement plants is ensured.

<sup>11</sup> The estimated costs to base the amount of surety bond is higher for amounts based on construction contracts to provide some protection for the County in case of a default where the construction contracts may not reflect true costs.

~~letter of credit must provide that the issuing financial institution will pay to the county, or as the county directs, following declaration of a default, such amounts as may be necessary to complete the restoration according to the terms of the agreement. The letter shall be irrevocable for twenty-four (24) months from the date of the restoration agreement but may, at the discretion of the building official, be reduced downward as work is completed; but in no event shall the final ten (10) percent be released until the one-year survivability rate and exotic maintenance requirements of subsection (a)(3) and (4) have been met. The permit holder shall also agree to release the issuer from all payments made after the declaration of default by the board of county commissioners.~~

b.(2) *Surety bond:* The surety bond shall be in a form and with a bonding company approved by the county attorney. The bond shall be payable to the county in the amount of estimated total cost for restoration work as calculated in sec.9.5-119(e)(1) above, and enforceable, on or beyond a date twelve (12) thirty-six (36) months from the date of the restoration agreement permit issued for the restoration work. Release of any bond shall be conditioned upon final approval by the building official county biologist of the restoration work.<sup>12</sup>

e. ~~Cash escrow: An escrow account may be established in the amount required with a federally insured financial institution (hereinafter "escrowee") in a form which meets the approval of the county attorney. The account shall be administered by the escrowee in accordance with an escrow agreement entered into between the county and the permit holder. The building official is hereby authorized to enter into such an agreement on behalf of the county. The agreement shall, at minimum require:~~

- ~~1) The escrowee will pay to the county, or as the county directs, following the declaration of a default, such amounts as may be necessary to complete the restoration according to the terms of the restoration agreement. The sum held in the account may be reduced downward by the building official, but in no event shall the final ten (10) percent be disbursed until the one-year survivability rate and exotic maintenance requirements of subsection (a)(3) and (4) have been met.~~
- ~~2) The permit holder shall agree to release the escrowee from all payments made pursuant to an order of the building~~

<sup>12</sup> The options for use of a cash escrow and letter of credit have been eliminated and replaced with surety bond which is easier to administer and ensures funds will be available even if property owner goes out of business.

~~official after a default has been declared by the board of county commissioners.~~

~~(4) In the event the building official determines that the permit holder has failed to perform the restoration work according to the terms of the restoration agreement or has failed to comply with the terms of the guarantees herein above set forth, the building official, in consultation with the county attorney, may take one (1) or more of the following actions:~~

~~a. In the case of the cash escrow or letter of credit, the building official shall advise the permit holder, in writing, of the failure, giving the permit holder thirty (30) days to cure the default. If the permit holder fails to cure the default, the building official may recommend to the board of county commissioners that they declare the permit holder in default, and, upon written notification to the escrowee or issuer of the letter of credit, some or all of the sums of money on deposit pursuant to the escrow agreement or letter of credit shall be disbursed by the escrowee or issuer solely upon the authorization of the building official, and the escrowee or issuer shall be released by the permit holder as to such payment(s).~~

~~b. In the event of a surety bond, the building official shall inform the bonding company in writing of the default and request that it take the necessary actions to complete the required restoration.~~

(3) *Default:* All guarantees shall provide that if the permit holder failed to complete required restoration work accordance with the restoration site plan and failed to comply with the requirements of sec. 9.5-119 (d), the director of planning in consultation with the county attorney, may take the following action: Inform the bonding company in writing of default by the permit holder and request that it take necessary actions to complete the required improvements.<sup>13</sup>

Section 6. Section 9.5-346 ("Transplantation Plan") MCC, is hereby deleted and replaced with the following:<sup>14</sup>

**Section 9.5-346. Mitigation standards and county environmental land management and restoration fund.**

<sup>13</sup> This default language has been added similar to language for subdivision improvements in Section 9.5-85.

<sup>14</sup> The entire concept of on-site transplantation, except for restoration, and off-site transplantation has been eliminated due to the problems with plant survivability. Instead, the concept is that for any clearing of habitat, the permit holder will have to pay a mitigation fee into the County's environmental land management and restoration fund. The County will be in a better position to direct such funds to where they are needed the most. The three-to-one requirement for replacement of native plants within cleared areas is consistent with Comprehensive Policy 205.2.9 for off-site transplantation.

(a) Mitigation standards: The removal of any listed threatened, endangered, commercially exploited, and regionally important native plant species and all native trees with a diameter at breast height (DBH) of greater than four (4) inches shall require payment to the County Environmental Land Management and Restoration Fund in an amount sufficient to replace each removed plant or tree on a two to one (2:1) basis.<sup>15</sup> The number, species, and sizes of trees and plants to be mitigated shall be identified in an existing conditions report approved by the county biologist in accordance with the minimum size requirements set forth in sec. 9.5-367.

(b) Mitigation fees determination: The mitigation fee shall be based on the replacement cost of the specific plants and trees. The costs for replacement plants and trees shall be based upon a price schedule maintained and updated annually by the county biologist. This schedule shall be based on price quotes by at least three (3) private plant nurseries within Monroe County or Miami-Dade County.

(c) County environmental land management and restoration fund: The board of county commissioners may establish a special revenue fund called the Monroe County Environmental Land Management and Restoration Fund. Revenues and fees deposited in this fund shall be used for restoration and management activities of public resource protection and conservation lands, as specifically detailed by resolution of the board, of county commissioners.<sup>16</sup>

**NOW THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF MONROE COUNTY, FLORIDA, THE FOLLOWING:**

**PASSED AND ADOPTED** by the Board of County Commissioners of Monroe County, Florida, at a regular meeting of said Board held on the 19<sup>th</sup> day of May, AD, 2004.

Mayor Murray Nelson \_\_\_\_\_  
Mayor Pro Tem David Rice \_\_\_\_\_  
Commissioner Charles "Sonny" McCoy \_\_\_\_\_  
Commissioner George Neugent \_\_\_\_\_  
Commissioner Dixie Spehar \_\_\_\_\_

(SEAL)  
Attest: DANNY L. KOLHAGE, Clerk

BOARD OF COUNTY COMMISSIONERS  
OF MONROE COUNTY, FLORIDA

By \_\_\_\_\_  
Deputy Clerk

By \_\_\_\_\_  
Mayor/Chairperson

<sup>15</sup> The existing off-site transplantation requirement is 3 to 1; however, as on-site transplantation is no longer an option, for purposes of mitigation the 2 to 1 ratio is more than sufficient to cover the costs of replacement and installation.

<sup>16</sup> This codifies the establishment of an environmental land management and restoration fund, which has already been authorized by resolution of the Board of County Commissioners. Funds from this account will not be used for land acquisition purposes and will be detailed by the Board of County Commissioners through policy resolutions.